

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOSEPH VIGIL,

Plaintiffs,

Case No. 3:18-cv-00424-MMD-WGC

v.

SGT. MAGUIRE, *et al.*,

Defendants.

ORDER

Plaintiff, who is in the custody of the Nevada Department of Corrections ("NDOC"), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1-1.) The Court screened Plaintiff's Complaint (ECF No. 5) and permitted him to file his First Amended Complaint (the "FAC") (ECF No. 7), which the Court screened as well (ECF No. 9). Before the Court is the Report and Recommendation ("R&R") of United States Magistrate Judge William G. Cobb (ECF No. 39), recommending that the Court deny Plaintiff's motion to amend the FAC (the "Motion") (ECF No. 24), deem the FAC the operative complaint, and permit Plaintiff to proceed only on his Eighth Amendment claim against Defendant Maguire, but dismiss all remaining claims and defendants with prejudice. Plaintiff had until May 12, 2020 to file an objection. To date, no objection has been filed. For that reason, and because the Court agrees with Judge Cobb, the Court will adopt the R&R.<sup>1</sup>

The Court incorporates the facts outlined in the R&R (ECF No. 39 at 1-6) and does not recite them here.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party

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<sup>1</sup>The Court has also reviewed the parties' related briefs (ECF Nos. 25-1, 28, 30) and Plaintiff's proposed second amended complaint (the "SAC") (ECF No. 25).

1 fails to object, however, the Court is not required to conduct “any review at all . . . of any  
2 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985);  
3 see also *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (“De novo review of  
4 the magistrate judges’ findings and recommendations is required if, but *only* if, one or both  
5 parties file objections to the findings and recommendations.”); Fed. R. Civ. P. 72, Advisory  
6 Committee Notes (1983) (providing that the court “need only satisfy itself that there is no  
7 clear error on the face of the record in order to accept the recommendation”).

8 The Court finds it unnecessary to engage in *de novo* review to determine whether  
9 to adopt Magistrate Judge Cobb’s R&R and is satisfied that there is no clear error. Judge  
10 Cobb found that because Plaintiff filed the Motion more than 21 days after serving Maguire  
11 and Maguire did not consent to amendment, Plaintiff was required to seek leave of court.  
12 (ECF No. 39 at 7 (citing to Fed. R. Civ. P. 15).) Judge Cobb recommended that the Court  
13 deny the Motion as futile. (*Id.* at 7, 13.) The Court already found that Plaintiff could proceed  
14 with his Eighth Amendment claim against Maguire (ECF No. 5 at 7), which Plaintiff  
15 realleges in the SAC (ECF No. 25 at 7-8). But as Judge Cobb found, Plaintiff has twice  
16 failed to state a claim for retaliation under the First Amendment, due process violation  
17 under the Fifth and Fourteenth Amendments, and excessive force under the Eighth  
18 Amendment against Defendants other than Maguire. (ECF No. 39 at 10-13.) Moreover,  
19 Judge Cobb found that Plaintiff cannot state a claim against the State of Nevada under §  
20 1983 or the Eleventh Amendment. (*Id.* at 9.) Judge Cobb therefore recommended that the  
21 Court dismiss all claims and Defendants with prejudice, except permit Plaintiff to proceed  
22 on his Eighth Amendment claim against Maguire. (*Id.* at 13-14.) The Court agrees.

23 It is therefore ordered that the Report and Recommendation of Magistrate Judge  
24 William G. Cobb (ECF No. 39) is accepted and adopted in full.

25 It is further ordered that Plaintiff’s Motion to Amend (ECF No. 24) is denied as futile.

26 It is furthered ordered that the First Amended Complaint (ECF No. 7) is deemed  
27 the operative Complaint. Plaintiff will proceed with only the Eighth Amendment excessive  
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1 force claim against Defendant Maguire. All other claims and Defendants are dismissed  
2 with prejudice.

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4 DATED THIS 15<sup>th</sup> day of May 2020.

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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE

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